

AMENDED IN SENATE AUGUST 11, 2014

AMENDED IN ASSEMBLY MAY 5, 2014

AMENDED IN ASSEMBLY MARCH 17, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1850

Introduced by Assembly Member Waldron
(~~Coauthor:~~Coauthors: Assembly Member Members Gonzalez and
Skinner)

February 19, 2014

An act to amend Section 136.2 of the Penal Code, relating to restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1850, as amended, Waldron. Restraining orders.

Existing law authorizes a court with jurisdiction over a criminal matter to issue specified protective orders upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, including an order protecting a victim of violent crime from all contact by the defendant. The violation of a restraining order issued pursuant to these provisions is a crime.

This bill would additionally authorize a court with jurisdiction over a criminal matter to issue an order protecting a witness of violent crime from all contact by the defendant upon a good cause belief that harm to, or intimidation or dissuasion of, that witness has occurred or is reasonably likely to occur. The bill would also, for the purposes of these provisions, provide that a minor who was not a victim of, but who was physically present at the time of, an act of domestic violence, is a witness

and is deemed to have suffered harm. By expanding the scope of a crime, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 136.2 of the Penal Code, proposed by AB 1498 and SB 910, that would become operative only if this bill and either or both of those bills are chaptered and become effective January 1, 2015, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 136.2 of the Penal Code, as amended by
- 2 Section 1.5 of Chapter 291 of the Statutes of 2013, is amended to
- 3 read:
- 4 136.2. (a) (1) Upon a good cause belief that harm to, or
- 5 intimidation or dissuasion of, a victim or witness has occurred or
- 6 is reasonably likely to occur, a court with jurisdiction over a
- 7 criminal matter may issue orders, including, but not limited to, the
- 8 following:
- 9 (A) An order issued pursuant to Section 6320 of the Family
- 10 Code.
- 11 (B) An order that a defendant shall not violate any provision of
- 12 Section 136.1.
- 13 (C) An order that a person before the court other than a
- 14 defendant, including, but not limited to, a subpoenaed witness or
- 15 other person entering the courtroom of the court, shall not violate
- 16 any provisions of Section 136.1.
- 17 (D) An order that a person described in this section shall have
- 18 no communication whatsoever with a specified witness or a victim,
- 19 except through an attorney under reasonable restrictions that the
- 20 court may impose.
- 21 (E) An order calling for a hearing to determine if an order as
- 22 described in subparagraphs (A) to (D), inclusive, should be issued.
- 23 (F) (i) An order that a particular law enforcement agency within
- 24 the jurisdiction of the court provide protection for a victim or a

1 witness, or both, or for immediate family members of a victim or
2 a witness who reside in the same household as the victim or witness
3 or within reasonable proximity of the victim's or witness'
4 household, as determined by the court. The order shall not be made
5 without the consent of the law enforcement agency except for
6 limited and specified periods of time and upon an express finding
7 by the court of a clear and present danger of harm to the victim or
8 witness or immediate family members of the victim or witness.

9 (ii) For purposes of this paragraph, "immediate family members"
10 include the spouse, children, or parents of the victim or witness.

11 (G) (i) An order protecting a victim or witness of violent crime
12 from all contact by the defendant, or contact, with the intent to
13 annoy, harass, threaten, or commit acts of violence, by the
14 defendant. The court or its designee shall transmit orders made
15 under this paragraph to law enforcement personnel within one
16 business day of the issuance, modification, extension, or
17 termination of the order, pursuant to subdivision (a) of Section
18 6380 of the Family Code. It is the responsibility of the court to
19 transmit the modification, extension, or termination orders made
20 under this paragraph to the same agency that entered the original
21 protective order into the Domestic Violence Restraining Order
22 System.

23 (ii) (I) If a court does not issue an order pursuant to clause (i)
24 in a case in which the defendant is charged with a crime of
25 domestic violence as defined in Section 13700, the court on its
26 own motion shall consider issuing a protective order upon a good
27 cause belief that harm to, or intimidation or dissuasion of, a victim
28 or witness has occurred or is reasonably likely to occur, that
29 provides as follows:

30 (ia) The defendant shall not own, possess, purchase, receive, or
31 attempt to purchase or receive, a firearm while the protective order
32 is in effect.

33 (ib) The defendant shall relinquish any firearms that he or she
34 owns or possesses pursuant to Section 527.9 of the Code of Civil
35 Procedure.

36 (II) Every person who owns, possesses, purchases, or receives,
37 or attempts to purchase or receive, a firearm while this protective
38 order is in effect is punishable pursuant to Section 29825.

39 (iii) An order issued, modified, extended, or terminated by a
40 court pursuant to this subparagraph shall be issued on forms

1 adopted by the Judicial Council of California and that have been
2 approved by the Department of Justice pursuant to subdivision (i)
3 of Section 6380 of the Family Code. However, the fact that an
4 order issued by a court pursuant to this section was not issued on
5 forms adopted by the Judicial Council and approved by the
6 Department of Justice shall not, in and of itself, make the order
7 unenforceable.

8 (iv) A protective order issued under this subparagraph may
9 require the defendant to be placed on electronic monitoring if the
10 local government, with the concurrence of the county sheriff or
11 the chief probation officer with jurisdiction, adopts a policy to
12 authorize electronic monitoring of defendants and specifies the
13 agency with jurisdiction for this purpose. If the court determines
14 that the defendant has the ability to pay for the monitoring program,
15 the court shall order the defendant to pay for the monitoring. If
16 the court determines that the defendant does not have the ability
17 to pay for the electronic monitoring, the court may order electronic
18 monitoring to be paid for by the local government that adopted
19 the policy to authorize electronic monitoring. The duration of
20 electronic monitoring shall not exceed one year from the date the
21 order is issued. At no time shall the electronic monitoring be in
22 place if the protective order is not in place.

23 (2) For purposes of this subdivision, a minor who was not a
24 victim of, but who was physically present at the time of, an act of
25 domestic violence, is a witness and is deemed to have suffered
26 harm within the meaning of paragraph (1).

27 (b) A person violating an order made pursuant to subparagraphs
28 (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be
29 punished for any substantive offense described in Section 136.1,
30 or for a contempt of the court making the order. A finding of
31 contempt shall not be a bar to prosecution for a violation of Section
32 136.1. However, a person so held in contempt shall be entitled to
33 credit for punishment imposed therein against a sentence imposed
34 upon conviction of an offense described in Section 136.1. A
35 conviction or acquittal for a substantive offense under Section
36 136.1 shall be a bar to a subsequent punishment for contempt
37 arising out of the same act.

38 (c) (1) (A) Notwithstanding subdivision (e), an emergency
39 protective order issued pursuant to Chapter 2 (commencing with
40 Section 6250) of Part 3 of Division 10 of the Family Code or

1 Section 646.91 shall have precedence in enforcement over any
2 other restraining or protective order, provided the emergency
3 protective order meets all of the following requirements:

4 (i) The emergency protective order is issued to protect one or
5 more individuals who are already protected persons under another
6 restraining or protective order.

7 (ii) The emergency protective order restrains the individual who
8 is the restrained person in the other restraining or protective order
9 specified in clause (i).

10 (iii) The provisions of the emergency protective order are more
11 restrictive in relation to the restrained person than are the provisions
12 of the other restraining or protective order specified in clause (i).

13 (B) An emergency protective order that meets the requirements
14 of subparagraph (A) shall have precedence in enforcement over
15 the provisions of any other restraining or protective order only
16 with respect to those provisions of the emergency protective order
17 that are more restrictive in relation to the restrained person.

18 (2) Except as described in paragraph (1), a no-contact order, as
19 described in Section 6320 of the Family Code, shall have
20 precedence in enforcement over any other restraining or protective
21 order.

22 (d) (1) A person subject to a protective order issued under this
23 section shall not own, possess, purchase, *or* receive, or attempt to
24 purchase or ~~receive~~ *receive*, a firearm while the protective order
25 is in effect.

26 (2) The court shall order a person subject to a protective order
27 issued under this section to relinquish any firearms he or she owns
28 or possesses pursuant to Section 527.9 of the Code of Civil
29 Procedure.

30 (3) A person who owns, possesses, ~~purchases~~ *purchases*, or
31 receives, or attempts to purchase or ~~receive~~ *receive*, a firearm while
32 the protective order is in effect is punishable pursuant to Section
33 29825.

34 (e) (1) In all cases ~~where~~ *in which* the defendant is charged
35 with a crime of domestic violence, as defined in Section 13700,
36 the court shall consider issuing the above-described orders on its
37 own motion. All interested parties shall receive a copy of those
38 orders. In order to facilitate this, the court's records of all criminal
39 cases involving domestic violence shall be marked to clearly alert
40 the court to this issue.

1 (2) In those cases in which a complaint, information, or
2 indictment charging a crime of domestic violence, as defined in
3 Section 13700, has been issued, except as described in subdivision
4 (c), a restraining order or protective order against the defendant
5 issued by the criminal court in that case has precedence in
6 enforcement over a civil court order against the defendant.

7 (3) Custody and visitation with respect to the defendant and his
8 or her minor children may be ordered by a family or juvenile court
9 consistent with the protocol established pursuant to subdivision
10 (f), but if ordered after a criminal protective order has been issued
11 pursuant to this section, the custody and visitation order shall make
12 reference to, and, if there is not an emergency protective order that
13 has precedence in enforcement pursuant to paragraph (1) of
14 subdivision (c), or a no-contact order, as described in Section 6320
15 of the Family Code, acknowledge the precedence of enforcement
16 of, an appropriate criminal protective order. On or before July 1,
17 2014, the Judicial Council shall modify the criminal and civil court
18 forms consistent with this subdivision.

19 (f) On or before January 1, 2003, the Judicial Council shall
20 promulgate a protocol, for adoption by each local court in
21 substantially similar terms, to provide for the timely coordination
22 of all orders against the same defendant and in favor of the same
23 named victim or victims. The protocol shall include, but shall not
24 be limited to, mechanisms for ensuring appropriate communication
25 and information sharing between criminal, family, and juvenile
26 courts concerning orders and cases that involve the same parties,
27 and shall permit a family or juvenile court order to coexist with a
28 criminal court protective order subject to the following conditions:

29 (1) An order that permits contact between the restrained person
30 and his or her children shall provide for the safe exchange of the
31 children and shall not contain language either printed or
32 handwritten that violates a “no-contact order” issued by a criminal
33 court.

34 (2) Safety of all parties shall be the courts’ paramount concern.
35 The family or juvenile court shall specify the time, day, place, and
36 manner of transfer of the child, as provided in Section 3100 of the
37 Family Code.

38 (g) On or before January 1, 2003, the Judicial Council shall
39 modify the criminal and civil court protective order forms
40 consistent with this section.

1 (h) In any case in which a complaint, information, or indictment
2 charging a crime of domestic violence, as defined in Section 13700,
3 has been filed, the court may consider, in determining whether
4 good cause exists to issue an order under subparagraph (A) of
5 paragraph (1) of subdivision (a), the underlying nature of the
6 offense charged, and the information provided to the court pursuant
7 to Section 273.75.

8 (i) (1) In all cases in which a criminal defendant has been
9 convicted of a crime of domestic violence as defined in Section
10 13700, a violation of Section 261, 261.5, or 262, or any crime that
11 requires the defendant to register pursuant to subdivision (c) of
12 Section 290, the court, at the time of sentencing, shall consider
13 issuing an order restraining the defendant from any contact with
14 the victim. The order may be valid for up to 10 years, as determined
15 by the court. This protective order may be issued by the court
16 regardless of whether the defendant is sentenced to the state prison
17 or a county jail, or whether imposition of sentence is suspended
18 and the defendant is placed on probation. It is the intent of the
19 Legislature in enacting this subdivision that the duration of any
20 restraining order issued by the court be based upon the seriousness
21 of the facts before the court, the probability of future violations,
22 and the safety of the victim and his or her immediate family.

23 (2) An order under this subdivision may include provisions for
24 electronic monitoring if the local government, upon receiving the
25 concurrence of the county sheriff or the chief probation officer
26 with jurisdiction, adopts a policy authorizing electronic monitoring
27 of defendants and specifies the agency with jurisdiction for this
28 purpose. If the court determines that the defendant has the ability
29 to pay for the monitoring program, the court shall order the
30 defendant to pay for the monitoring. If the court determines that
31 the defendant does not have the ability to pay for the electronic
32 monitoring, the court may order the electronic monitoring to be
33 paid for by the local government that adopted the policy authorizing
34 electronic monitoring. The duration of the electronic monitoring
35 shall not exceed one year from the date the order is issued.

36 (j) For purposes of this section, "local government" means the
37 county that has jurisdiction over the protective order.

38 *SEC. 1.1. Section 136.2 of the Penal Code, as amended by*
39 *Section 1.5 of Chapter 291 of the Statutes of 2013, is amended to*
40 *read:*

1 136.2. (a) (1) Upon a good cause belief that harm to, or
2 intimidation or dissuasion of, a victim or witness has occurred or
3 is reasonably likely to occur, a court with jurisdiction over a
4 criminal matter may issue orders, including, but not limited to, the
5 following:

6 ~~(1)~~

7 (A) An order issued pursuant to Section 6320 of the Family
8 Code.

9 ~~(2)~~

10 (B) An order that a defendant shall not violate any provision of
11 Section 136.1.

12 ~~(3)~~

13 (C) An order that a person before the court other than a
14 defendant, including, but not limited to, a subpoenaed witness or
15 other person entering the courtroom of the court, shall not violate
16 any provisions of Section 136.1.

17 ~~(4)~~

18 (D) An order that a person described in this section shall have
19 no communication whatsoever with a specified witness or a victim,
20 except through an attorney under reasonable restrictions that the
21 court may impose.

22 ~~(5)~~

23 (E) An order calling for a hearing to determine if an order as
24 described in ~~paragraphs (1) to (4)~~, *subparagraphs (A) to (D)*,
25 inclusive, should be issued.

26 ~~(6) (A)~~

27 (F) (i) An order that a particular law enforcement agency within
28 the jurisdiction of the court provide protection for a victim or a
29 witness, or both, or for immediate family members of a victim or
30 a witness who reside in the same household as the victim or witness
31 or within reasonable proximity of the victim's or witness'
32 household, as determined by the court. The order shall not be made
33 without the consent of the law enforcement agency except for
34 limited and specified periods of time and upon an express finding
35 by the court of a clear and present danger of harm to the victim or
36 witness or immediate family members of the victim or witness.

37 ~~(B)~~

38 (ii) For purposes of this paragraph, "immediate family members"
39 include the spouse, children, or parents of the victim or witness.

40 ~~(7) (A)~~

1 (G) (i) An order protecting ~~victims~~ *a victim or witness* of violent
2 crime from all contact by the defendant, or contact, with the intent
3 to annoy, harass, threaten, or commit acts of violence, by the
4 defendant. The court or its designee shall transmit orders made
5 under this paragraph to law enforcement personnel within one
6 business day of the issuance, modification, extension, or
7 termination of the order, pursuant to subdivision (a) of Section
8 6380 of the Family Code. It is the responsibility of the court to
9 transmit the modification, extension, or termination orders made
10 under this paragraph to the same agency that entered the original
11 protective order into the Domestic Violence Restraining Order
12 System.

13 ~~(B) (i)~~
14 (ii) (I) If a court does not issue an order pursuant to
15 ~~subparagraph (A) clause (i)~~ in a case in which the defendant is
16 charged with a crime of domestic violence as defined in Section
17 13700, the court on its own motion shall consider issuing a
18 protective order upon a good cause belief that harm to, or
19 intimidation or dissuasion of, a victim or witness has occurred or
20 is reasonably likely to occur, that provides as follows:

21 ~~(H)~~
22 (ia) The defendant shall not own, possess, purchase, receive,
23 or attempt to purchase or receive, a firearm while the protective
24 order is in effect.

25 ~~(H)~~
26 (ib) The defendant shall relinquish any firearms that he or she
27 owns or possesses pursuant to Section 527.9 of the Code of Civil
28 Procedure.

29 ~~(ii)~~
30 (II) Every person who owns, possesses, purchases, or receives,
31 or attempts to purchase or receive, a firearm while this protective
32 order is in effect is punishable pursuant to Section 29825.

33 ~~(C)~~
34 (iii) An order issued, modified, extended, or terminated by a
35 court pursuant to this ~~paragraph~~ *subparagraph* shall be issued on
36 forms adopted by the Judicial Council of California and that have
37 been approved by the Department of Justice pursuant to subdivision
38 (i) of Section 6380 of the Family Code. However, the fact that an
39 order issued by a court pursuant to this section was not issued on
40 forms adopted by the Judicial Council and approved by the

1 Department of Justice shall not, in and of itself, make the order
2 unenforceable.

3 ~~(D)~~

4 (iv) A protective order issued under this ~~paragraph~~ *subparagraph*
5 may require the defendant to be placed on electronic monitoring
6 if the local government, with the concurrence of the county sheriff
7 or the chief probation officer with jurisdiction, adopts a policy to
8 authorize electronic monitoring of defendants and specifies the
9 agency with jurisdiction for this purpose. If the court determines
10 that the defendant has the ability to pay for the monitoring program,
11 the court shall order the defendant to pay for the monitoring. If
12 the court determines that the defendant does not have the ability
13 to pay for the electronic monitoring, the court may order electronic
14 monitoring to be paid for by the local government that adopted
15 the policy to authorize electronic monitoring. The duration of
16 electronic monitoring shall not exceed one year from the date the
17 order is issued. At no time shall the electronic monitoring be in
18 place if the protective order is not in place.

19 (2) *For purposes of this subdivision, a minor who was not a*
20 *victim of, but who was physically present at the time of, an act of*
21 *domestic violence, is a witness and is deemed to have suffered*
22 *harm within the meaning of paragraph (1).*

23 (b) A person violating an order made pursuant to ~~paragraphs~~
24 ~~(1) to (7), subparagraphs (A) to (G), inclusive, of paragraph (1)~~
25 *of subdivision (a) may be punished for any substantive offense*
26 *described in Section 136.1, or for a contempt of the court making*
27 *the order. A finding of contempt shall not be a bar to prosecution*
28 *for a violation of Section 136.1. However, a person so held in*
29 *contempt shall be entitled to credit for punishment imposed therein*
30 *against a sentence imposed upon conviction of an offense described*
31 *in Section 136.1. A conviction or acquittal for a substantive offense*
32 *under Section 136.1 shall be a bar to a subsequent punishment for*
33 *contempt arising out of the same act.*

34 (c) (1) (A) Notwithstanding subdivision (e), an emergency
35 protective order issued pursuant to Chapter 2 (commencing with
36 Section 6250) of Part 3 of Division 10 of the Family Code or
37 Section 646.91 shall have precedence in enforcement over any
38 other restraining or protective order, provided the emergency
39 protective order meets all of the following requirements:

1 (i) The emergency protective order is issued to protect one or
2 more individuals who are already protected persons under another
3 restraining or protective order.

4 (ii) The emergency protective order restrains the individual who
5 is the restrained person in the other restraining or protective order
6 specified in ~~subparagraph (A): clause (i)~~.

7 (iii) The provisions of the emergency protective order are more
8 restrictive in relation to the restrained person than are the provisions
9 of the other restraining or protective order specified in
10 ~~subparagraph (A): clause (i)~~.

11 (B) An emergency protective order that meets the requirements
12 of ~~paragraph (1) subparagraph (A)~~ shall have precedence in
13 enforcement over the provisions of any other restraining or
14 protective order only with respect to those provisions of the
15 emergency protective order that are more restrictive in relation to
16 the restrained person.

17 (2) Except as described in paragraph (1), a no-contact order, as
18 described in Section 6320 of the Family Code, shall have
19 precedence in enforcement over any other restraining or protective
20 order.

21 (d) (1) A person subject to a protective order issued under this
22 section shall not own, possess, purchase, *or* receive, or attempt to
23 purchase or ~~receive~~ *receive*, a firearm while the protective order
24 is in effect.

25 (2) The court shall order a person subject to a protective order
26 issued under this section to relinquish any firearms he or she owns
27 or possesses pursuant to Section 527.9 of the Code of Civil
28 Procedure.

29 (3) A person who owns, possesses, ~~purchases~~ *purchases*, or
30 receives, or attempts to purchase or ~~receive~~ *receive*, a firearm while
31 the protective order is in effect is punishable pursuant to Section
32 29825.

33 (e) (1) In all cases ~~where in which~~ the defendant is charged
34 with a crime of domestic violence, as defined in Section 13700,
35 *or a violation of Section 261, 261.5, or 262, or any crime that*
36 *requires the defendant to register pursuant to subdivision (c) of*
37 *Section 290*, the court shall consider issuing the above-described
38 orders on its own motion. All interested parties shall receive a
39 copy of those orders. In order to facilitate this, the court's records
40 of all criminal cases involving domestic violence *or a violation of*

1 *Section 261, 261.5, or 262, or any crime that requires the defendant*
2 *to register pursuant to subdivision (c) of Section 290, shall be*
3 *marked to clearly alert the court to this issue.*

4 (2) In those cases in which a complaint, information, or
5 indictment charging a crime of domestic violence, as defined in
6 Section 13700, *or a violation of Section 261, 261.5, or 262, or any*
7 *crime that requires the defendant to register pursuant to*
8 *subdivision (c) of Section 290, has been issued, except as described*
9 *in subdivision (c), a restraining order or protective order against*
10 *the defendant issued by the criminal court in that case has*
11 *precedence in enforcement over a civil court order against the*
12 *defendant.*

13 (3) Custody and visitation with respect to the defendant and his
14 or her minor children may be ordered by a family or juvenile court
15 consistent with the protocol established pursuant to subdivision
16 (f), but if ordered after a criminal protective order has been issued
17 pursuant to this section, the custody and visitation order shall make
18 reference to, and, if there is not an emergency protective order that
19 has precedence in enforcement pursuant to paragraph (1) of
20 subdivision (c), or a no-contact order, as described in Section 6320
21 of the Family Code, acknowledge the precedence of enforcement
22 of, an appropriate criminal protective order. On or before July 1,
23 2014, the Judicial Council shall modify the criminal and civil court
24 forms consistent with this subdivision.

25 (f) On or before January 1, 2003, the Judicial Council shall
26 promulgate a protocol, for adoption by each local court in
27 substantially similar terms, to provide for the timely coordination
28 of all orders against the same defendant and in favor of the same
29 named victim or victims. The protocol shall include, but shall not
30 be limited to, mechanisms for ensuring appropriate communication
31 and information sharing between criminal, family, and juvenile
32 courts concerning orders and cases that involve the same parties,
33 and shall permit a family or juvenile court order to coexist with a
34 criminal court protective order subject to the following conditions:

35 (1) An order that permits contact between the restrained person
36 and his or her children shall provide for the safe exchange of the
37 children and shall not contain language either printed or
38 handwritten that violates a “no-contact order” issued by a criminal
39 court.

1 (2) Safety of all parties shall be the courts' paramount concern.
2 The family or juvenile court shall specify the time, day, place, and
3 manner of transfer of the child, as provided in Section 3100 of the
4 Family Code.

5 (g) On or before January 1, 2003, the Judicial Council shall
6 modify the criminal and civil court protective order forms
7 consistent with this section.

8 (h) (1) In any case in which a complaint, information, or
9 indictment charging a crime of domestic violence, as defined in
10 Section 13700, has been filed, the court may consider, in
11 determining whether good cause exists to issue an order under
12 *subparagraph (A) of paragraph (1) of subdivision (a)*, the
13 underlying nature of the offense charged, and the information
14 provided to the court pursuant to Section 273.75.

15 (2) *In any case in which a complaint, information, or indictment*
16 *charging a violation of Section 261, 261.5, or 262, or any crime*
17 *that requires the defendant to register pursuant to subdivision (c)*
18 *of Section 290, has been filed, the court may consider, in*
19 *determining whether good cause exists to issue an order under*
20 *paragraph (1) of subdivision (a), the underlying nature of the*
21 *offense charged, the defendant's relationship to the victim, the*
22 *likelihood of continuing harm to the victim, any current restraining*
23 *order or protective order issued by any civil or criminal court*
24 *involving the defendant, and the defendant's criminal history,*
25 *including, but not limited to, prior convictions for a violation of*
26 *Section 261, 261.5, or 262, or any crime that requires the defendant*
27 *to register pursuant to subdivision (c) of Section 290, or any other*
28 *forms of violence, or any weapons offenses.*

29 (i) (1) In all cases in which a criminal defendant has been
30 convicted of a crime of domestic violence as defined in Section
31 13700, a violation of Section 261, 261.5, or 262, or any crime that
32 requires the defendant to register pursuant to subdivision (c) of
33 Section 290, the court, at the time of sentencing, shall consider
34 issuing an order restraining the defendant from any contact with
35 the victim. The order may be valid for up to 10 years, as determined
36 by the court. This protective order may be issued by the court
37 regardless of whether the defendant is sentenced to the state prison
38 or a county jail, or whether imposition of sentence is suspended
39 and the defendant is placed on probation. It is the intent of the
40 Legislature in enacting this subdivision that the duration of any

1 restraining order issued by the court be based upon the seriousness
2 of the facts before the court, the probability of future violations,
3 and the safety of the victim and his or her immediate family.

4 (2) An order under this subdivision may include provisions for
5 electronic monitoring if the local government, upon receiving the
6 concurrence of the county sheriff or the chief probation officer
7 with jurisdiction, adopts a policy authorizing electronic monitoring
8 of defendants and specifies the agency with jurisdiction for this
9 purpose. If the court determines that the defendant has the ability
10 to pay for the monitoring program, the court shall order the
11 defendant to pay for the monitoring. If the court determines that
12 the defendant does not have the ability to pay for the electronic
13 monitoring, the court may order the electronic monitoring to be
14 paid for by the local government that adopted the policy authorizing
15 electronic monitoring. The duration of the electronic monitoring
16 shall not exceed one year from the date the order is issued.

17 (j) For purposes of this section, “local government” means the
18 county that has jurisdiction over the protective order.

19 *SEC. 1.2. Section 136.2 of the Penal Code, as amended by*
20 *Section 1.5 of Chapter 291 of the Statutes of 2013, is amended to*
21 *read:*

22 136.2. (a) (1) Upon a good cause belief that harm to, or
23 intimidation or dissuasion of, a victim or witness has occurred or
24 is reasonably likely to occur, a court with jurisdiction over a
25 criminal matter may issue orders, including, but not limited to, the
26 following:

27 ~~(1)~~

28 (A) An order issued pursuant to Section 6320 of the Family
29 Code.

30 ~~(2)~~

31 (B) An order that a defendant shall not violate any provision of
32 Section 136.1.

33 ~~(3)~~

34 (C) An order that a person before the court other than a
35 defendant, including, but not limited to, a subpoenaed witness or
36 other person entering the courtroom of the court, shall not violate
37 any provisions of Section 136.1.

38 ~~(4)~~

39 (D) An order that a person described in this section shall have
40 no communication whatsoever with a specified witness or a victim,

1 except through an attorney under reasonable restrictions that the
2 court may impose.

3 ~~(5)~~

4 (E) An order calling for a hearing to determine if an order as
5 described in ~~paragraphs (1) to (4)~~, *subparagraphs (A) to (D)*,
6 inclusive, should be issued.

7 ~~(6) (A)~~

8 (F) (i) An order that a particular law enforcement agency within
9 the jurisdiction of the court provide protection for a victim or a
10 witness, or both, or for immediate family members of a victim or
11 a witness who reside in the same household as the victim or witness
12 or within reasonable proximity of the victim's or witness'
13 household, as determined by the court. The order shall not be made
14 without the consent of the law enforcement agency except for
15 limited and specified periods of time and upon an express finding
16 by the court of a clear and present danger of harm to the victim or
17 witness or immediate family members of the victim or witness.

18 ~~(B)~~

19 (ii) For purposes of this paragraph, "immediate family members"
20 include the spouse, children, or parents of the victim or witness.

21 ~~(7) (A)~~

22 (G) (i) An order protecting ~~victims~~ *a victim or witness* of violent
23 crime from all contact by the defendant, or contact, with the intent
24 to annoy, harass, threaten, or commit acts of violence, by the
25 defendant. The court or its designee shall transmit orders made
26 under this paragraph to law enforcement personnel within one
27 business day of the issuance, modification, extension, or
28 termination of the order, pursuant to subdivision (a) of Section
29 6380 of the Family Code. It is the responsibility of the court to
30 transmit the modification, extension, or termination orders made
31 under this paragraph to the same agency that entered the original
32 protective order into the Domestic Violence Restraining Order
33 System.

34 ~~(B) (i)~~

35 (ii) (I) If a court does not issue an order pursuant to
36 ~~subparagraph (A) clause (i)~~ in a case in which the defendant is
37 charged with a crime ~~of involving~~ domestic violence as defined in
38 ~~Section 13700, 13700 or in Section 6211 of the Family Code~~, the
39 court on its own motion shall consider issuing a protective order
40 upon a good cause belief that harm to, or intimidation or dissuasion

1 of, a victim or witness has occurred or is reasonably likely to occur,
2 that provides as follows:

3 (H)

4 (ia) The defendant shall not own, possess, purchase, receive,
5 or attempt to purchase or receive, a firearm while the protective
6 order is in effect.

7 (H)

8 (ib) The defendant shall relinquish any firearms that he or she
9 owns or possesses pursuant to Section 527.9 of the Code of Civil
10 Procedure.

11 (ii)

12 (II) Every person who owns, possesses, purchases, or receives,
13 or attempts to purchase or receive, a firearm while this protective
14 order is in effect is punishable pursuant to Section 29825.

15 (C)

16 (iii) An order issued, modified, extended, or terminated by a
17 court pursuant to this ~~paragraph~~ *subparagraph* shall be issued on
18 forms adopted by the Judicial Council of California and that have
19 been approved by the Department of Justice pursuant to subdivision
20 (i) of Section 6380 of the Family Code. However, the fact that an
21 order issued by a court pursuant to this section was not issued on
22 forms adopted by the Judicial Council and approved by the
23 Department of Justice shall not, in and of itself, make the order
24 unenforceable.

25 (D)

26 (iv) A protective order issued under this ~~paragraph~~ *subparagraph*
27 may require the defendant to be placed on electronic monitoring
28 if the local government, with the concurrence of the county sheriff
29 or the chief probation officer with jurisdiction, adopts a policy to
30 authorize electronic monitoring of defendants and specifies the
31 agency with jurisdiction for this purpose. If the court determines
32 that the defendant has the ability to pay for the monitoring program,
33 the court shall order the defendant to pay for the monitoring. If
34 the court determines that the defendant does not have the ability
35 to pay for the electronic monitoring, the court may order electronic
36 monitoring to be paid for by the local government that adopted
37 the policy to authorize electronic monitoring. The duration of
38 electronic monitoring shall not exceed one year from the date the
39 order is issued. At no time shall the electronic monitoring be in
40 place if the protective order is not in place.

1 (2) *For purposes of this subdivision, a minor who was not a*
2 *victim of, but who was physically present at the time of, an act of*
3 *domestic violence, is a witness and is deemed to have suffered*
4 *harm within the meaning of paragraph (1).*

5 (b) A person violating an order made pursuant to ~~paragraphs~~
6 ~~(1) to (7), subparagraphs (A) to (G), inclusive, of paragraph (1)~~
7 *of subdivision (a) may be punished for any substantive offense*
8 *described in Section 136.1, or for a contempt of the court making*
9 *the order. A finding of contempt shall not be a bar to prosecution*
10 *for a violation of Section 136.1. However, a person so held in*
11 *contempt shall be entitled to credit for punishment imposed therein*
12 *against a sentence imposed upon conviction of an offense described*
13 *in Section 136.1. A conviction or acquittal for a substantive offense*
14 *under Section 136.1 shall be a bar to a subsequent punishment for*
15 *contempt arising out of the same act.*

16 (c) (1) (A) Notwithstanding subdivision (e), an emergency
17 protective order issued pursuant to Chapter 2 (commencing with
18 Section 6250) of Part 3 of Division 10 of the Family Code or
19 Section 646.91 shall have precedence in enforcement over any
20 other restraining or protective order, provided the emergency
21 protective order meets all of the following requirements:

22 (i) The emergency protective order is issued to protect one or
23 more individuals who are already protected persons under another
24 restraining or protective order.

25 (ii) The emergency protective order restrains the individual who
26 is the restrained person in the other restraining or protective order
27 specified in ~~subparagraph (A): clause (i).~~

28 (iii) The provisions of the emergency protective order are more
29 restrictive in relation to the restrained person than are the provisions
30 of the other restraining or protective order specified in
31 ~~subparagraph (A): clause (i).~~

32 (B) An emergency protective order that meets the requirements
33 of ~~paragraph (1) subparagraph (A)~~ shall have precedence in
34 enforcement over the provisions of any other restraining or
35 protective order only with respect to those provisions of the
36 emergency protective order that are more restrictive in relation to
37 the restrained person.

38 (2) Except as described in paragraph (1), a no-contact order, as
39 described in Section 6320 of the Family Code, shall have

1 precedence in enforcement over any other restraining or protective
2 order.

3 (d) (1) A person subject to a protective order issued under this
4 section shall not own, possess, purchase, *or* receive, or attempt to
5 purchase or ~~receive~~ *receive*, a firearm while the protective order
6 is in effect.

7 (2) The court shall order a person subject to a protective order
8 issued under this section to relinquish any firearms he or she owns
9 or possesses pursuant to Section 527.9 of the Code of Civil
10 Procedure.

11 (3) A person who owns, possesses, ~~purchases~~ *purchases*, or
12 receives, or attempts to purchase or ~~receive~~ *receive*, a firearm while
13 the protective order is in effect is punishable pursuant to Section
14 29825.

15 (e) (1) In all cases ~~where~~ *in which* the defendant is charged
16 with a crime ~~of involving~~ domestic violence, as defined in Section
17 ~~13700, 13700 or in Section 6211 of the Family Code~~, the court
18 shall consider issuing the above-described orders on its own
19 motion. All interested parties shall receive a copy of those orders.
20 In order to facilitate this, the court's records of all criminal cases
21 involving domestic violence shall be marked to clearly alert the
22 court to this issue.

23 (2) In those cases in which a complaint, information, or
24 indictment charging a crime ~~of involving~~ domestic violence, as
25 defined in Section ~~13700, 13700 or in Section 6211 of the Family~~
26 *Code*, has been issued, except as described in subdivision (c), a
27 restraining order or protective order against the defendant issued
28 by the criminal court in that case has precedence in enforcement
29 over a civil court order against the defendant.

30 (3) Custody and visitation with respect to the defendant and his
31 or her minor children may be ordered by a family or juvenile court
32 consistent with the protocol established pursuant to subdivision
33 (f), but if ordered after a criminal protective order has been issued
34 pursuant to this section, the custody and visitation order shall make
35 reference to, and, if there is not an emergency protective order that
36 has precedence in enforcement pursuant to paragraph (1) of
37 subdivision (c), or a no-contact order, as described in Section 6320
38 of the Family Code, acknowledge the precedence of enforcement
39 of, an appropriate criminal protective order. On or before July 1,

1 2014, the Judicial Council shall modify the criminal and civil court
2 forms consistent with this subdivision.

3 (f) On or before January 1, 2003, the Judicial Council shall
4 promulgate a protocol, for adoption by each local court in
5 substantially similar terms, to provide for the timely coordination
6 of all orders against the same defendant and in favor of the same
7 named victim or victims. The protocol shall include, but shall not
8 be limited to, mechanisms for ensuring appropriate communication
9 and information sharing between criminal, family, and juvenile
10 courts concerning orders and cases that involve the same parties,
11 and shall permit a family or juvenile court order to coexist with a
12 criminal court protective order subject to the following conditions:

13 (1) An order that permits contact between the restrained person
14 and his or her children shall provide for the safe exchange of the
15 children and shall not contain language either printed or
16 handwritten that violates a “no-contact order” issued by a criminal
17 court.

18 (2) Safety of all parties shall be the courts’ paramount concern.
19 The family or juvenile court shall specify the time, day, place, and
20 manner of transfer of the child, as provided in Section 3100 of the
21 Family Code.

22 (g) On or before January 1, 2003, the Judicial Council shall
23 modify the criminal and civil court protective order forms
24 consistent with this section.

25 (h) In any case in which a complaint, information, or indictment
26 charging a crime ~~of involving~~ domestic violence, as defined in
27 ~~Section 13700, 13700 or in Section 6211 of the Family Code,~~ has
28 been filed, the court may consider, in determining whether good
29 cause exists to issue an order under *subparagraph (A) of* paragraph
30 (1) of subdivision (a), the underlying nature of the offense charged,
31 and the information provided to the court pursuant to Section
32 273.75.

33 (i) (1) In all cases in which a criminal defendant has been
34 convicted of a crime ~~of involving~~ domestic violence as defined in
35 ~~Section 13700, 13700 or in Section 6211 of the Family Code,~~ a
36 violation of Section 261, 261.5, or 262, or any crime that requires
37 the defendant to register pursuant to subdivision (c) of Section
38 290, the court, at the time of sentencing, shall consider issuing an
39 order restraining the defendant from any contact with the victim.
40 The order may be valid for up to 10 years, as determined by the

1 court. This protective order may be issued by the court regardless
2 of whether the defendant is sentenced to the state prison or a county
3 jail, or whether imposition of sentence is suspended and the
4 defendant is placed on probation. It is the intent of the Legislature
5 in enacting this subdivision that the duration of any restraining
6 order issued by the court be based upon the seriousness of the facts
7 before the court, the probability of future violations, and the safety
8 of the victim and his or her immediate family.

9 (2) An order under this subdivision may include provisions for
10 electronic monitoring if the local government, upon receiving the
11 concurrence of the county sheriff or the chief probation officer
12 with jurisdiction, adopts a policy authorizing electronic monitoring
13 of defendants and specifies the agency with jurisdiction for this
14 purpose. If the court determines that the defendant has the ability
15 to pay for the monitoring program, the court shall order the
16 defendant to pay for the monitoring. If the court determines that
17 the defendant does not have the ability to pay for the electronic
18 monitoring, the court may order the electronic monitoring to be
19 paid for by the local government that adopted the policy authorizing
20 electronic monitoring. The duration of the electronic monitoring
21 shall not exceed one year from the date the order is issued.

22 (j) For purposes of this section, “local government” means the
23 county that has jurisdiction over the protective order.

24 *SEC. 1.3. Section 136.2 of the Penal Code, as amended by*
25 *Section 1.5 of Chapter 291 of the Statutes of 2013, is amended to*
26 *read:*

27 136.2. (a) (1) Upon a good cause belief that harm to, or
28 intimidation or dissuasion of, a victim or witness has occurred or
29 is reasonably likely to occur, a court with jurisdiction over a
30 criminal matter may issue orders, including, but not limited to, the
31 following:

32 ~~(1)~~

33 (A) An order issued pursuant to Section 6320 of the Family
34 Code.

35 ~~(2)~~

36 (B) An order that a defendant shall not violate any provision of
37 Section 136.1.

38 ~~(3)~~

39 (C) An order that a person before the court other than a
40 defendant, including, but not limited to, a subpoenaed witness or

1 other person entering the courtroom of the court, shall not violate
2 any provisions of Section 136.1.

3 ~~(4)~~

4 (D) An order that a person described in this section shall have
5 no communication whatsoever with a specified witness or a victim,
6 except through an attorney under reasonable restrictions that the
7 court may impose.

8 ~~(5)~~

9 (E) An order calling for a hearing to determine if an order as
10 described in ~~paragraphs (1) to (4)~~, *subparagraphs (A) to (D)*,
11 inclusive, should be issued.

12 ~~(6) (A)~~

13 (F) (i) An order that a particular law enforcement agency within
14 the jurisdiction of the court provide protection for a victim or a
15 witness, or both, or for immediate family members of a victim or
16 a witness who reside in the same household as the victim or witness
17 or within reasonable proximity of the victim's or witness'
18 household, as determined by the court. The order shall not be made
19 without the consent of the law enforcement agency except for
20 limited and specified periods of time and upon an express finding
21 by the court of a clear and present danger of harm to the victim or
22 witness or immediate family members of the victim or witness.

23 ~~(B)~~

24 (ii) For purposes of this paragraph, "immediate family members"
25 include the spouse, children, or parents of the victim or witness.

26 ~~(7) (A)~~

27 (G) (i) An order protecting ~~victims~~ *a victim or witness* of violent
28 crime from all contact by the defendant, or contact, with the intent
29 to annoy, harass, threaten, or commit acts of violence, by the
30 defendant. The court or its designee shall transmit orders made
31 under this paragraph to law enforcement personnel within one
32 business day of the issuance, modification, extension, or
33 termination of the order, pursuant to subdivision (a) of Section
34 6380 of the Family Code. It is the responsibility of the court to
35 transmit the modification, extension, or termination orders made
36 under this paragraph to the same agency that entered the original
37 protective order into the Domestic Violence Restraining Order
38 System.

39 ~~(B) (i)~~

(ii) (I) If a court does not issue an order pursuant to subparagraph (A) clause (i) in a case in which the defendant is charged with a crime of involving domestic violence as defined in Section 13700, 13700 or in Section 6211 of the Family Code, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(H)

(ia) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(H)

(ib) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii)

(II) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to Section 29825.

(C)

(iii) An order issued, modified, extended, or terminated by a court pursuant to this paragraph subparagraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(D)

(iv) A protective order issued under this paragraph subparagraph may require the defendant to be placed on electronic monitoring if the local government, with the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy to authorize electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability

1 to pay for the electronic monitoring, the court may order electronic
2 monitoring to be paid for by the local government that adopted
3 the policy to authorize electronic monitoring. The duration of
4 electronic monitoring shall not exceed one year from the date the
5 order is issued. At no time shall the electronic monitoring be in
6 place if the protective order is not in place.

7 *(2) For purposes of this subdivision, a minor who was not a*
8 *victim of, but who was physically present at the time of, an act of*
9 *domestic violence, is a witness and is deemed to have suffered*
10 *harm within the meaning of paragraph (1).*

11 (b) A person violating an order made pursuant to ~~paragraphs~~
12 ~~(1) to (7), subparagraphs (A) to (G), inclusive, of paragraph (1)~~
13 ~~of subdivision (a)~~ may be punished for any substantive offense
14 described in Section 136.1, or for a contempt of the court making
15 the order. A finding of contempt shall not be a bar to prosecution
16 for a violation of Section 136.1. However, a person so held in
17 contempt shall be entitled to credit for punishment imposed therein
18 against a sentence imposed upon conviction of an offense described
19 in Section 136.1. A conviction or acquittal for a substantive offense
20 under Section 136.1 shall be a bar to a subsequent punishment for
21 contempt arising out of the same act.

22 (c) (1) (A) Notwithstanding subdivision (e), an emergency
23 protective order issued pursuant to Chapter 2 (commencing with
24 Section 6250) of Part 3 of Division 10 of the Family Code or
25 Section 646.91 shall have precedence in enforcement over any
26 other restraining or protective order, provided the emergency
27 protective order meets all of the following requirements:

28 (i) The emergency protective order is issued to protect one or
29 more individuals who are already protected persons under another
30 restraining or protective order.

31 (ii) The emergency protective order restrains the individual who
32 is the restrained person in the other restraining or protective order
33 specified in ~~subparagraph (A): clause (i).~~

34 (iii) The provisions of the emergency protective order are more
35 restrictive in relation to the restrained person than are the provisions
36 of the other restraining or protective order specified in
37 ~~subparagraph (A): clause (i).~~

38 (B) An emergency protective order that meets the requirements
39 of ~~paragraph (1) subparagraph (A)~~ shall have precedence in
40 enforcement over the provisions of any other restraining or

1 protective order only with respect to those provisions of the
2 emergency protective order that are more restrictive in relation to
3 the restrained person.

4 (2) Except as described in paragraph (1), a no-contact order, as
5 described in Section 6320 of the Family Code, shall have
6 precedence in enforcement over any other restraining or protective
7 order.

8 (d) (1) A person subject to a protective order issued under this
9 section shall not own, possess, purchase, *or* receive, or attempt to
10 purchase or ~~receive~~ *receive*, a firearm while the protective order
11 is in effect.

12 (2) The court shall order a person subject to a protective order
13 issued under this section to relinquish any firearms he or she owns
14 or possesses pursuant to Section 527.9 of the Code of Civil
15 Procedure.

16 (3) A person who owns, possesses, ~~purchases~~ *purchases*, or
17 receives, or attempts to purchase or ~~receive~~ *receive*, a firearm while
18 the protective order is in effect is punishable pursuant to Section
19 29825.

20 (e) (1) In all cases ~~where~~ *in which* the defendant is charged
21 with a crime ~~of involving~~ domestic violence, as defined in Section
22 ~~13700, 13700 or in Section 6211 of the Family Code, or a violation~~
23 *of Section 261, 261.5, or 262, or any crime that requires the*
24 *defendant to register pursuant to subdivision (c) of Section 290,*
25 the court shall consider issuing the above-described orders on its
26 own motion. All interested parties shall receive a copy of those
27 orders. In order to facilitate this, the court's records of all criminal
28 cases involving domestic violence *or a violation of Section 261,*
29 *261.5, or 262, or any crime that requires the defendant to register*
30 *pursuant to subdivision (c) of Section 290,* shall be marked to
31 clearly alert the court to this issue.

32 (2) In those cases in which a complaint, information, or
33 indictment charging a crime ~~of involving~~ domestic violence, as
34 defined in Section ~~13700, 13700 or in Section 6211 of the Family~~
35 *Code, or a violation of Section 261, 261.5, or 262, or any crime*
36 *that requires the defendant to register pursuant to subdivision (c)*
37 *of Section 290,* has been issued, except as described in subdivision
38 (c), a restraining order or protective order against the defendant
39 issued by the criminal court in that case has precedence in
40 enforcement over a civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and, if there is not an emergency protective order that has precedence in enforcement pursuant to paragraph (1) of subdivision (c), or a no-contact order, as described in Section 6320 of the Family Code, acknowledge the precedence of enforcement of, an appropriate criminal protective order. On or before July 1, 2014, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for ensuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) An order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no-contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h) (1) In any case in which a complaint, information, or indictment charging a crime ~~of involving~~ domestic violence, as defined in Section ~~13700~~, 13700 or in Section 6211 of the Family Code, has been filed, the court may consider, in determining whether good cause exists to issue an order under *subparagraph (A) of* paragraph (1) of subdivision (a), the underlying nature of

1 the offense charged, and the information provided to the court
2 pursuant to Section 273.75.

3 (2) *In any case in which a complaint, information, or indictment*
4 *charging a violation of Section 261, 261.5, or 262, or any crime*
5 *that requires the defendant to register pursuant to subdivision (c)*
6 *of Section 290, has been filed, the court may consider, in*
7 *determining whether good cause exists to issue an order under*
8 *paragraph (1) of subdivision (a), the underlying nature of the*
9 *offense charged, the defendant's relationship to the victim, the*
10 *likelihood of continuing harm to the victim, any current restraining*
11 *order or protective order issued by any civil or criminal court*
12 *involving the defendant, and the defendant's criminal history,*
13 *including, but not limited to, prior convictions for a violation of*
14 *Section 261, 261.5, or 262, or any crime that requires the defendant*
15 *to register pursuant to subdivision (c) of Section 290, or any other*
16 *forms of violence, or any weapons offenses.*

17 (i) (1) In all cases in which a criminal defendant has been
18 convicted of a crime ~~of~~ involving domestic violence as defined in
19 ~~Section 13700; 13700 or in Section 6211 of the Family Code,~~ a
20 violation of Section 261, 261.5, or 262, or any crime that requires
21 the defendant to register pursuant to subdivision (c) of Section
22 290, the court, at the time of sentencing, shall consider issuing an
23 order restraining the defendant from any contact with the victim.
24 The order may be valid for up to 10 years, as determined by the
25 court. This protective order may be issued by the court regardless
26 of whether the defendant is sentenced to the state prison or a county
27 jail, or whether imposition of sentence is suspended and the
28 defendant is placed on probation. It is the intent of the Legislature
29 in enacting this subdivision that the duration of any restraining
30 order issued by the court be based upon the seriousness of the facts
31 before the court, the probability of future violations, and the safety
32 of the victim and his or her immediate family.

33 (2) An order under this subdivision may include provisions for
34 electronic monitoring if the local government, upon receiving the
35 concurrence of the county sheriff or the chief probation officer
36 with jurisdiction, adopts a policy authorizing electronic monitoring
37 of defendants and specifies the agency with jurisdiction for this
38 purpose. If the court determines that the defendant has the ability
39 to pay for the monitoring program, the court shall order the
40 defendant to pay for the monitoring. If the court determines that

1 the defendant does not have the ability to pay for the electronic
2 monitoring, the court may order the electronic monitoring to be
3 paid for by the local government that adopted the policy authorizing
4 electronic monitoring. The duration of the electronic monitoring
5 shall not exceed one year from the date the order is issued.

6 (j) For purposes of this section, “local government” means the
7 county that has jurisdiction over the protective order.

8 *SEC. 2. (a) Section 1.1 of this bill incorporates amendments*
9 *to Section 136.2 of the Penal Code proposed by both this bill and*
10 *Assembly Bill 1498. It shall only become operative if (1) both bills*
11 *are enacted and become effective on or before January 1, 2015,*
12 *(2) each bill amends Section 136.2 of the Penal Code, and (3)*
13 *Senate Bill 910 is not enacted or as enacted does not amend that*
14 *section, and (4) this bill is enacted after Assembly Bill 1498, in*
15 *which case Sections 1, 1.2, and 1.3 of this bill shall not become*
16 *operative.*

17 *(b) Section 1.2 of this bill incorporates amendments to Section*
18 *136.2 of the Penal Code proposed by both this bill and Senate Bill*
19 *910. It shall only become operative if (1) both bills are enacted*
20 *and become effective on or before January 1, 2015, (2) each bill*
21 *amends Section 136.2 of the Penal Code, (3) Assembly Bill 1498*
22 *is not enacted or as enacted does not amend that section, and (4)*
23 *this bill is enacted after Senate Bill 910 in which case Sections 1,*
24 *1.1, and 1.3 of this bill shall not become operative.*

25 *(c) Section 1.3 of this bill incorporates amendments to Section*
26 *136.2 of the Penal Code proposed by this bill, Assembly Bill 1498,*
27 *and Senate Bill 910. It shall only become operative if (1) all three*
28 *bills are enacted and become effective on or before January 1,*
29 *2015, (2) all three bills amend Section 136.2 of the Penal Code,*
30 *and (3) this bill is enacted after Assembly Bill 1498 and Senate*
31 *Bill 910, in which case Sections 1, 1.1, and 1.2 of this bill shall*
32 *not become operative.*

33 ~~SEC. 2.~~

34 *SEC. 3.* No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O